

## **TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

### **Rule Information Sheet**

#### **Underground Storage Tank Delivery Prohibition LSA Document #13-272**

#### **Overview**

The Indiana Department of Environment Management (IDEM) implements a United States Environmental Protection Agency (U.S. EPA) approved underground storage tank (UST) program and receives funding through Subtitle I of the Solid Waste Disposal Act (SWDA). A state that plans to receive funding under Subtitle I of SWDA for UST programs must comply with 42 U.S.C. 6991. The state UST rules are found at 329 IAC 9, and require UST owners and operators to install and maintain equipment to prevent corrosion, detect leaks, prevent overflow, prevent spills, and meet other performance and upgrade standards. Owners and operators must also maintain financial responsibility for corrective action and liability to third parties. When a UST owner or operator is noncompliant, 329 IAC 9 has various methods for ensuring compliance, one method being delivery prohibition. During delivery prohibition, a UST is prohibited from receiving further delivery of a regulated substance until the UST is brought back into compliance.

This rulemaking amends the definitions at 329 IAC 9-1 and the delivery prohibition program at 329 IAC 9-4.5 to incorporate the 2012 Indiana General Assembly changes at IC 13-23-1-2(c)(9) and IC 13-23-1-4 which direct IDEM to fully implement the requirements of 42 U.S.C. 6991k. The federal requirements in 42 U.S.C. 6991k direct administrators of an approved program to establish at a minimum, criteria for determining ineligibility, processes for providing notice of ineligibility, the mechanism for identifying an ineligible tank, the process for reclassification, and delineation for rural and remote areas. These changes will ensure IDEM continues to receive federal funding through Subtitle I of the SWDA and that the rules continue to comport with Indiana law.

In response to board comments at preliminary adoption, IDEM will identify the ineligible tank in the notice at 329 IAC 9-4.5-6(b)(3). IDEM explored the possibility of vapor recovery at the board's request, however, the authorizing legislation at IC 13-23-1-4(b)(2) clearly lists the instances where a red tag may be considered and vapor recovery is outside the scope. However, Stage I vapor recovery requirements at 326 IAC 8-4-6(b) address vapor recovery at gasoline dispensing facilities. IDEM considered including a time period to issue a letter indicating a tank was eligible to receive product at the board's request, however this would decrease IDEM's flexibility to work with the owner or operator during the reclassification process where documentation and re-inspections may be necessary. IDEM does intend to develop a standard operating procedure, which would out-line that under normal operating procedures, and with full

and timely cooperation of the owner or operator, IDEM should be able to provide reclassification decisions within five business days.

**Affected Persons**

Any person or entity who owns, operates, or delivers to a UST in the State of Indiana.

**Reasons for the Rule**

IC 13-23-1-2(c)(9) and IC 13-23-1-4 require full implementation of the requirements under federal law 42 U.S.C. 6991k. Federal law requires any implementing agency with an approved program, including IDEM, to implement the standards of 42 U.S.C. 6991k to continue receiving federal funds through Subtitle I of the SWDA.

**Economic Impact of the Rule**

There is a low economic impact from this rulemaking. The delivery prohibition program is implemented at the discretion of the commissioner of IDEM. Delivery prohibition does not place any additional requirements on UST owners and operators. An economic impact of the rule only occurs if a UST owner or operator is noncompliant. Current state law and rules require UST owners to maintain registration, pay annual registration fees and implement various techniques to detect, prevent, and correct releases and spills. UST delivery prohibition addresses violations of state rules.

**Scheduled Hearings**

First Public Hearing: June 11, 2014, at 1:30 p.m., at the Indiana Government Center South, 302 West Washington Street, Conference Center Room A, Indianapolis, Indiana.

Second Public Hearing: September 10, 2014, at 1:30 p.m., at the Indiana Government Center South, 302 West Washington Street, Conference Center Room A, Indianapolis, Indiana.

**IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel, (317) 234-8559, (800) 451-6027 (in Indiana), or [laguilar@idem.in.gov](mailto:laguilar@idem.in.gov).